

LABOUR DEPARTMENT

The 17th May, 1982

No. 9(1)82-6Lab/4136.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s National Rubber Manufacturing Ltd., Plot No. 41, Sector 16-A, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 8 of 1980

between

SHRI NARENDER SAINI, WORKMAN AND THE RESPONDENT MANAGEMENT
OF M/S NATIONAL RUBBER MANUFACTURING LTD., PLOT NO. 41,
SECTOR 16-A, FARIDABAD

Shri R.N. Roy for the workman.

Shri A.S. Chadda for the respondent.

AWARD

This reference No. 8 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/230/79/922, dated 9th January, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Narender Saini, workman and the respondent management of M/s. National Rubber Manufacturing, Plot No. 41, Sector 16-A, Faridabad. The terms of the reference was :—

Whether the dismissal of Shri Narender Saini was justified and in order? If not, to what relief is he entitled?

After receiving this reference notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the claimant joined the services of the respondent on 15th December, 1976 as Office Assistant and was drawing Rs. 601.45 P. per month. The local Manager of the respondent management is annoyed by the claimant on a complaint made by him to the Head Office and on account of this annoyance the claimant was charge-sheeted on 10th October, 1978 and placed under suspension. The claimant replied the charge-sheet denying the allegation of the respondent management. After that a domestic enquiry was constituted against the claimant and the workman participated in the enquiry, but he was denied the opportunity of defence in spite of his request for an adjournment by a telegram of his personal ground. The enquiry was against the principle of natural justice. After this enquiry he was dismissed from 22nd August, 1979. The dismissal of the workman is not justified and against the principles of natural justice, *mala fide* and for the victimization of the workman. So he is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the claimant was dismissed after a proper enquiry giving all complete opportunity of defending and abiding by the all principles of natural justice. The order of the management based on the enquiry report of the enquiry officer. The claimant was working in

furtherance of sales promotion and was drawing salary of Rs. 500/- per month so he cannot deem to be a workman. He was working in his supervisory category and was drawing Rs. 500/- per month and cannot be a workman. The fact which the workman alleged in his claim statement is quite wrong and the facts are twisted to make out the fact in his favour. The claimant was charge-sheeted on various grounds. There were various acts of omission and commission against him such as taking out the confidential papers from the office without the prior permission of the Assistant Office Manager causing damage to the property of the company and insulting the superior officers of the company. After the charge-sheet, the claimant was given a chance to give a satisfactory reply but the reply was not satisfactory with a result that a domestic enquiry was ordered, and the enquiry officer conducted the enquiry keeping all the canons of natural justice, equity, giving the fairest chance to the claimant to cross-examine the witness of the management, lead his defence and after giving complete opportunity, the service of the workman was dismissed after giving him complete opportunity of defence. The claimant raised no objection of enquiry or of enquiry officer in the demand notice or the claim statement. The order of dismissal by the management was, after a proper and fair enquiry against the workman quite justified, so the reference may be rejected.

On the pleadings of the parties, the following issues were framed :—

1. Whether the claimant is not a workman under the provision of the Industrial Disputes Act ? If so, to what effect ?
2. Whether a proper and regular enquiry was held by the respondent against the claimant ? If so, to what effect ?
3. Whether the termination of service of the workman was proper, justified and in order ? If not, to what relief is he entitled ?
4. Relief ?

As ordered by my predecessor the issues No. 1 and 2 be treated as preliminary issues and decided first. My findings on the issues are as under :—

Issue No. 1 :

Issue No. 1 is whether the claimant is a workman or not under the Industrial Disputes Act, 1947. The parties led no evidence on this issue and did not press the same at the time of arguments. The onus to prove this issue was on the respondent. So the issue is decided in the absence of any arguments and evidence in favour of the workman and against the respondent.

Issue No. 2 :

Issue No. 2 is for the fair and proper enquiry. On this issue the representative of the respondent argued that as stated by the respondent witness MW-1 who was the enquiry officer in the domestic enquiry Shri A. S. Chadda that he was appointed as Enquiry Officer on 8th November, 1978. The charge-sheet against the workman were that the workman take out the confidential papers from the office without the prior permission and misbehaved the other superior officers and also insulting, annoying and threatening him, (2) causing roudism and making filthy atmosphere in the office and damaged property, (3) man-handling of office manager, (4) negligent in performing his duties. The enquiry officer enquired on this charge-sheet in the domestic enquiry and he has stated in the court that he sent three letters to the workman which are Ex. M-1 to M-3. In response of this letter, the workman came present in the enquiry proceedings. On the first day all the procedure of the enquiry was told to the workman

and the workman participated in the enquiry throughout and signed the proceedings of the enquiry with his representative but he absented himself on the last day. The charge-sheet was read out and explained to the workman on the first day. The charge-sheet given to the workman is Ex. M-4 and the other papers are Ex. M-5. The workman replied,—*vide* Ex. M-6 the letters of the workman are Ex. M-7 which is a notification and there are papers from Ex. M-8 to M-16 which were included in the enquiry proceedings and after completing the whole procedure the workman was allowed to cross-examine the witnesses of the respondent. The enquiry proceedings as stated by the witness is Ex. M-17 from page 1 to 40. The workman produced some papers at the time of enquiry which are page from 72 to 106 in the enquiry proceedings. After closing the enquiry the enquiry officer submitted his report which is Ex. M-18. The workman was given full opportunity to produce another workman for his assistance under the law and his representative remained in the enquiry proceedings throughout and signed every page of the proceedings. On the last day of the enquiry on 17th March, 1979 the workman absented himself from the enquiry as he could not produce the defence witnesses. He further argued that the enquiry officer as WW-1 has stated in his cross-examination that the workman had given three or four opportunity before that time and on that day the representative of the workman came present before the enquiry officer and stated that he had no instructions to proceed with the enquiry and the enquiry was proceeded *ex parte*. As stated by the enquiry officer the claimant came to the enquiry officer on 22nd March, 1979 with an application to fix the date of enquiry which had already been concluded on 17th March, 1979. The workman was given proceedings on 17th March, 1979 which are Ex. M-17 and enquiry officer made the answer on that application which Ex. M-20 asking the workman to proceed according to law but the workman did not applied to the enquiry officer for additional evidence or for setting aside the *ex parte* order, without which nothing could be done and the enquiry officer had taken the right step in view of the fair enquiry. He further argued that the workman is a graduate and not a illiterate person who know the legality of things and as admitted by the workman in his cross-examination as WW-1 that he was given the full opportunity in the enquiry proceedings. He has admitted in his cross-examination that he produced one witness before the enquiry officer which was objected by the management because the management want to cross-examine the all defence witness at one time. He further admitted that he gave in writing to the enquiry officer for the opportunity in the enquiry proceedings. He has also admitted that Ex. M-17 bears his signature. The workman also admitted the suggestion as correct as he stated before the enquiry officer at Mark "A". It is also admitted that Shri S. Dass was his representative in the enquiry. He has further admitted that he sought adjournment because his relative met with an accident and the adjournment was granted. He has again admitted that he met the enquiry officer on March 22nd five days after the close of enquiry and received the copies of proceedings dated 17th March, 1979. He has also admitted that he did not applied for the further opportunity in the proceedings and admitted M-19 which was given by him and the order Ex. M-22 was also written in his presence and was read out to him. He has also admitted that during the course of enquiry he asked for the inspection of file which was allowed by the enquiry officer. He has further admitted that evidence of the enquiry officer were sent to him before the termination order. He further admitted in his cross-examination that he made no explanation to the enquiry officer about the none presence of his witnesses and in the last in the cross-examination he has admitted the suggestion of the representative of the respondent as correct that he was given full opportunity in the enquiry proceedings and all the applications and objections filed by him were decided properly. The representative of the respondent argued that after all admission by the workman his statement and cross-examination before the Court as WW-1 there is no doubt that domestic enquiry was not held properly by the respondent and orders passed by the respondent management in accordance with charge-sheet against the workman and the enquiry officer holding the workman as guilty on charge No. 1 to 3.

The representative of the workman argued that the claimant was an old employee of the respondent and joined the service on 15th December, 1976 as office assistant and terminated on 22nd August, 1979 after giving the false charge-sheet to the workman and holding the enquiry for their own interest. The claimant gave the satisfactory reply but the respondent wanted to remove the workmen as they were annoyed with him due to complaint made by him to the Head Office. Deputy Manager arranged of these charges on a false facts. The enquiry officer appointed was not impartial person and he is a standing counsel of the respondent who gave no proper opportunity to the claimant during the enquiry proceedings and the workman was not given the chance to produce his defence witness in spite of his request for adjournment by a telegramme for his personal illness. The enquiry was against the principle of natural justice and liable to be struck down only of this ground. The workman sent a telegram to the enquiry officer on 17th March, 1979 which is Ex. M-3 which was received by the enquiry officer on the same day as written on Ex. W-3 which is admitted by the enquiry officer in his cross-examination as MW-1 but the telegramme as written on it was not received at 4.30 p.m. but it was received during the enquiry proceedings and the enquiry officer knowing this fact that the workman is ill, did not provide him another opportunity which is also against the principles of natural justice. The workman sent the medical certificate with a letter which is Ex. W-1 and also produced the fitness certificate which is Ex. W-2 which are admitted by the enquiry officer in the court on 16th May, 1980 at the time of admission and denial of the documents. The domestic enquiry which closed by the enquiry officer without recording the defence witness is not an enquiry and it cannot be called a fair and proper enquiry the workman was not given the chance to allow his evidence and the enquiry was not fair and proper.

After hearing the arguments of both the parties, and going through the file, I am of the view that as every thing admitted by the workman in his statement as WW-1 in the Court nothing remains for doubt about the enquiry and the enquiry officer had given all the required opportunity to the workman in the enquiry proceedings as admitted by him so the enquiry was proper and fair. The workman's representative arguments is only based on the telegramme and the medical certificate as stated by the enquiry officer in his cross-examination that the telegramme was received by him at 4.30 p.m. after finishing the enquiry proceedings. The representative of the workman should have asked the enquiry officer for adjournment in spite of saying no instruction to the enquiry proceedings. It is fault of the workman and his representative and not of the enquiry officer. So this issue is decided in favour of the respondent and against the workman.

Issue Nos. 3 and 4 :

After deciding preliminary issue and the issue of enquiry in favour of the respondent there is no need to give any chance to the parties to lead further evidence on the reference to discuss these issues. So the workman is not entitled for any relief. In view of the issue No. 2 for the proper enquiry.

No order as to costs.

Dated the 13th April, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endst. No. 842, dated 19th April, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

H. L. GUGNANI,

Commissioner and Secretary to Government, Haryana,
Labour and Employment Department.